

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF GEORGIA
AUGUSTA DIVISION

In the Matter of:	*	CHAPTER 7
	*	CASE NO. 88-11124
BOSWELL ELECTRICAL CON-	*	
TRACTORS, INC.,	*	
	*	
Debtor	*	
	*	
ACE ELECTRIC SUPPLY COMPANY,	*	
ADVERSARY PROCEEDING	*	ADVERSARY PROCEEDING
INC.,	*	NO. 89-1056
	*	
Plaintiff/Appellee	*	
	*	
vs.	*	CIVIL ACTION
	*	CV190-175
JAMES D. WALKER, JR., as	*	
Chapter 7 Trustee and BOSWELL	*	Augusta Division
ELECTRICAL CONTRACTORS, INC.,	*	Filed in Office
	*	9:55 AM
Defendants/	*	July 9, 1991
Appellants	*	

O R D E R

This case is before the court on the appeal of James D. Walker, Jr., Trustee, for Boswell Electrical Contractors, Inc. ("appellant") from the Bankruptcy Court's order of June 27, 1990. The Bankruptcy Court's order found that Ace Electric Supply Company, Inc. ("Ace") was entitled to certain monies paid by the City of Augusta, Georgia, to appellant. The payment by the City was for materials and labor used by Boswell Electrical Contractors, Inc. ("Boswell") pre-petition on two construction projects for city lighting. Boswell had entered into two contracts with the City for the installation

of street lighting. To fulfill the requirements on these contracts, Boswell purchased materials and supplies from Ace, the sole supplier of materials used on the project.

At the time Boswell filed this bankruptcy petition, the City owed \$22,107.86 to

Boswell, representing the remaining total balance due and payable under the contracts. On June 6, 1989, the City paid this amount to the Chapter 7 Trustee. Subsequently, Ace filed suit for the turnover of property in the Bankruptcy Court. The basis for the suit by Ace was that it was still owed \$26,766.37 in outstanding payments from Boswell. This amount represented the outstanding balance owed for materials supplied on the lighting project.

The case came for trial before the Bankruptcy Court on January 8, 1990. On June 27, 1990, the Bankruptcy Court entered an order finding that Ace was entitled to the entire balance of the proceeds paid to the trustee from the City on June 6, 1989. This payment amounted to \$22,107.86. The issue before this Court is whether the Bankruptcy Court correctly found that a constructive trust should be placed on those funds for the benefit of Ace.

In this circuit and under Georgia law, the constructive trust doctrine allows monies owed a contractor for services on a construction project performed pre-petition to be allocated for the payment of materials and labor provided on the project. By operation of law in Georgia, a trust is placed on the funds paid or owed to the contractor for the benefit of 2

subcontractors or suppliers who provided labor and materials for the construction project. See In re: Inca Materials, 880 F.2d 1307 (11th Cir. 1989).

A constructive trust imposed on funds under Georgia law must be enforced in bankruptcy. A debtor and the trustee have only those property rights that the debtor had prior to the bankruptcy filing. The legislative history of section 541 of the Bankruptcy Code states that property held in trust for another is not property of the estate:

Situations occasionally arise when property ostensibly belonging to the debtor will actually not be property of the debtor, but will be held in trust for another. For example, if the debtor has incurred medical bills that were covered by insurance, and the insurance company has sent the payment of the bills to the debtor before the debtor has paid the bill for which the payment was reimbursed, the payment would actually be held in a constructive trust for the person to whom the bill was owed.

H. Rep. No. 95-595, 95th Congress, First Sess. (1977), at p. 368.

The above legislative history applies to the situation in this case where a constructive trust was imposed on the funds to ensure that those whose labor and materials earned the monies received their just compensation. Under Georgia law, these funds never become part of the bankruptcy estate. See United Parcel Services v. Weben Industries, Inc., 794 F.2d 1005, 1009 (5th Cir. 1986). Indirect statutory support also exists for this principle in Georgia based on O.C.G.A. 16-8-15, which provides for criminal penalties when a contractor

uses construction contract funds for any purpose other than payments to the project's laborers or materialmen. See United Parcel Services, supra.

Therefore, in accordance with the above discussion, this Court finds that a constructive trust was properly imposed on the funds paid by the City of Augusta to the Trustee. The cases show that under Georgia law unpaid materialmen, such as Ace, prevail over unsecured general creditors of the debtor with respect to monies payable on a particular project. See Inca Materials, supra. Accordingly, the order of the Bankruptcy Court entered June 27, 1990, is AFFIRMED IN ITS ENTIRETY.

ORDER ENTERED at Augusta, Georgia, this 9th day of July, 1991.

DUDLEY H. BOWEN, JR.
UNITED STATES DISTRICT JUDGE

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF GEORGIA

ACE ELECTRIC SUPPLY COMPANY, INC.

JUDGMENT IN A CIVIL CASE

V.

JAMES D. WALKER, JR., as
Chapter 7 Trustee and
BOSWELL ELECTRICAL CONTRACTORS,
INC .

CASE NUMBER 190-175

Jury Verdict. This action came before the Court for a trial by jury, The issues have been tried and the jury has rendered its verdict.

X Decision by Court. This action came on for decision before the Court. The issues have been considered and a decision has been rendered.

IT IS ORDERED AND ADJUDGED that in accordance with the Order of this court dated July 9, 1991 affirming the decision of the United States Bankruptcy Court entered on June 27, 1991, this case stands dismissed.

E.O.D.
7/9/91

July 9 1991 HENRY R. CRUMLEY. JR.
Date

Clerk

Linda J. Flanders
(By) Deputy Clerk